

Howard & Howard

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“Collective Bargaining” for Better Wind Development Deals



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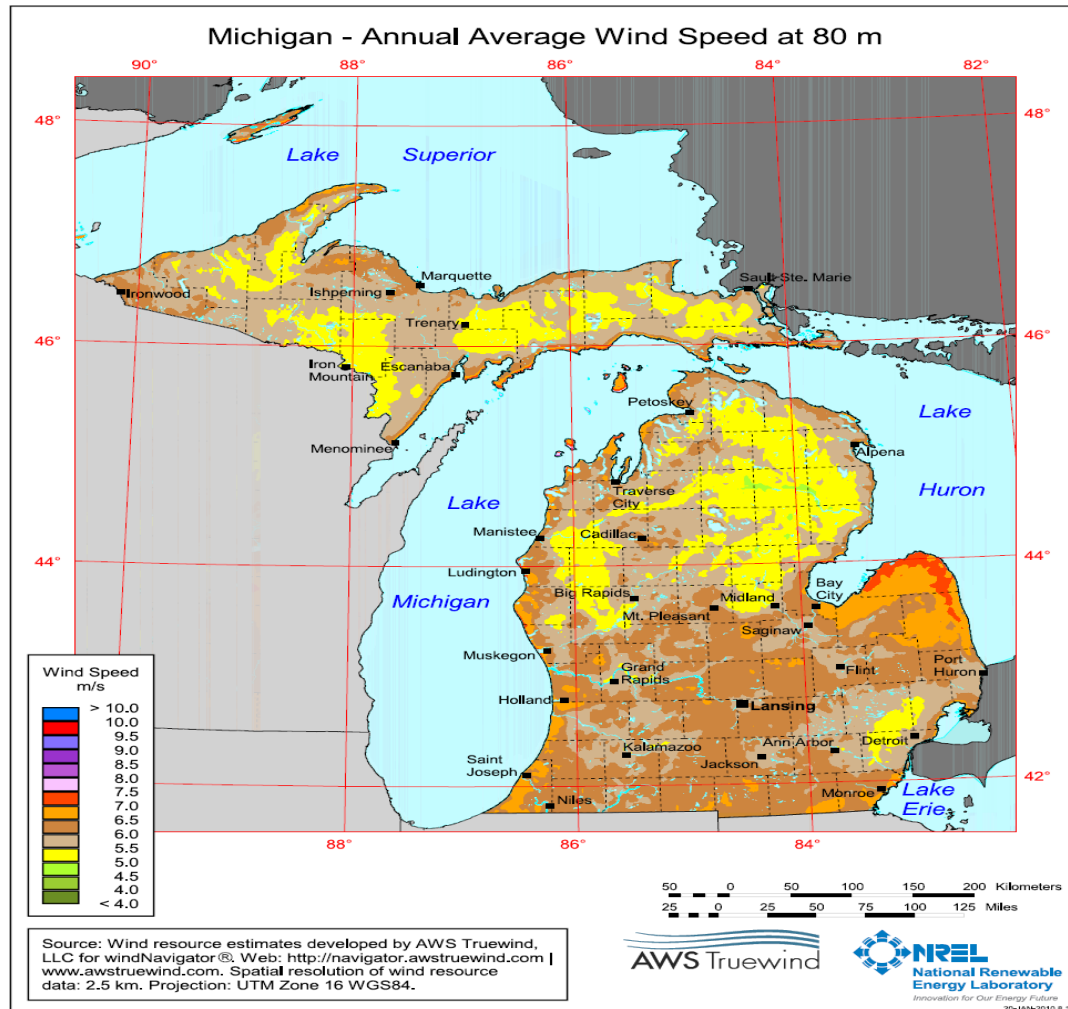
Agenda

- I. Background – Participants**
- II. Timeline**
- III. Milestones**
- IV. Advantages of Approach**
 - Financial**
 - Developers' Perspective**

Background – Participants

- **Michigan: “Marginal” Wind State**
- **State passed Renewable Portfolio Standard in October, 2008**
- **Howard & Howard active in development of legislation, eventually “Act 295”**

Michigan Wind 80 meters



Background – Participants

- February, 2009 visited by three landowners from the “Thumb” area
- Landowners had been approached by several wind developers, and one of Michigan’s traditional utilities
- Landowners were concerned about the time invested in considering the solicitations, didn’t know how to analyze offers
- Neighbors in same situation: About 20 landowners representing around 5,000 acres were similarly situated



Timeline

- **February – May 2009: Organized group – informal association**
- **May – June 2009: Promoted opportunity to developers**
- **September – December 2009: Analyzed offers**
- **December – March 2010: Negotiated documents, compensation**
- **April 22, 2010: First Signing Event (about 30 landowners)**
- **June 17, 2010: Second Signing Event**

Milestones

- **First Milestone: Organization of Group**
 - Informal association
 - All bound to Confidentiality Agreement
 - All made modest contribution to cover initial legal fees
 - Dedicated to negotiating with one voice
 - Opinion leaders served as primary contacts
 - Regular communications/“votes” as necessary

Milestones

- **Second Milestone: “Terms Sheet” Development**
 - Essentially, a Request for Proposals
 - Financial Terms a principal component
 - Qualitative Terms: Act on one, act on all
 - Delivered to 12 developers known interested in Michigan
 - PR campaign followed, generated interest in another 6 developers
 - 4 of 5 finalists were identified through PR

Milestones

- **Third Milestone: Selection**
 - Both quantitative and qualitative criteria examined
 - Among qualitative considerations: Ability to finance, projects on ground, project due diligence conducted to date, relationships with offtakers
- **Group size began to grow rapidly: Expanded to 70 landowners representing about 15,000 acres**

Milestones

- **Presentations made to group by 2 finalists**
- **Consensus on winner developed**
- **Agreements negotiated**
 - **“All for one, one for all” concept captured in Agreement**
 - **If move on one, must move on all**
 - **Pool created to reflect fact that all are making same commitment to project**

Milestones

- **Fourth Milestone:**
Agreements Signed
 - First group on 40th Anniversary of Earth Day
 - Second group mid June, 2010
- Told by AWEA first such effort successfully brought through Agreement stage east of Mississippi



Advantages of Approach: \$\$\$

| | Utility | Market | Collectively - Bargained |
|-----------------------------|-------------------|------------------|--------------------------------|
| Signing Bonus | \$0 | Y | +600% |
| Option Payments (Annually) | \$0 | \$0 | Y |
| Option Trigger Payment | \$0 | \$0 | Y |
| Construction Period Payment | \$0 | \$0 | Y |
| Roads/UG Lines | \$0 | Y | Same |
| Non-Obstruction | \$0 | Y | +333% |
| Turbine Placement | \$10,000 | \$0 | Y |
| Royalty - Minimum - % | \$0 Y +1/2 REC | Y Y but 0 REC | +66% +37-62% ++ All RECs |

Bottom Line Results

- **Collective Bargaining secured approximately \$56 million more for landowner group over 50 years, or about \$75 more *per acre, per year***
- **Increased leverage with respect to other critical terms**
 - Can not exclude participants
 - Fund/Share portion of turbine royalty pool
 - Indemnification
 - Arbitration
 - Other non-competing leases
 - Attorney fee reimbursement
 - Restoration Escrow

Developers' Perspective

- Many initially reluctant to participate
- Believed group could be divided?
- Unity and cohesiveness meant that several developers who had worked area were shut out
- *Developers who had reached finalist phase are asking to participate in next project*
 - Greatly reduces land acquisition time
 - Serves as a catalyst for local support
 - Eliminates individual negotiations

Interested in Getting Started?

- Gauge interest
- Understand opportunity that can be offered
- Identify goals
- Develop effective system for communication/decision making
- Hire knowledgeable counsel

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